

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

DOMINIC JOSEPH ABBOTT,)
Plaintiff,)
v.) Civil Action No. 13-205
BUTLER COUNTY CONVICTION)
CR-1080/C.A. 2126 OF 2003, et. al.,)
Defendants.)
Judge Nora Barry Fischer

MEMORANDUM ORDER

The above captioned case was initiated by Plaintiff Dominic Joseph Abbott's filing of a "Motion for Preliminary Injunction [sic] Restraining Defendants from Official Act of Oppression, and Request for an Evidentiary Hearing Concerning Final Order of Court from Butler County Courthouse Dated Twenty Ninth Day of January 2013 Serving as Notice of Appeal Interlocutory Appeal" (Docket No. 1) on February 7, 2013, and was referred to a United States Magistrate Judge for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and the Local Rules of Court. Plaintiff then subsequently filed a "Motion for Arrest of Judgement [sic] Order in Conjunction with Requested Restraining Order in Regards to Constitutional Error Prejudicing Petitioner the Right to Redress" (Docket No. 2) on February 11, 2013.

On April 9, 2013, the Magistrate Judge filed a Report and Recommendation (Docket No. [3]) recommending that to the extent that Plaintiff's submissions were construed as a civil rights complaint, that it should be dismissed with prejudice in accordance with the screening provisions

promulgated in the Prison Litigation Reform Act, 28 U.S.C. § 1915(e)(2)(B)(ii), for failure to state a claim upon which relief can be granted and, alternatively, to the extent that Plaintiff's submissions were construed as a habeas petition under 28 U.S.C. § 2254, it should be dismissed under 28 U.S.C. § 2244(b) as a second or successive habeas petition, which had been filed without first obtaining certification to do so from the United States Court of Appeals for the Third Circuit. Plaintiff was served with the Report and Recommendation at his listed address and was advised that he had fourteen days to file written objections to the Report and Recommendation. No objections have been filed to date.

After *de novo* review of the pleadings and documents in this case, together with the Report and Recommendation, the following order is entered:

AND NOW, this 22nd day of May, 2013,

IT IS ORDERED that, to the extent that Plaintiff's submissions are construed as a civil rights Complaint, such Complaint is **DISMISSED** with prejudice in accordance with the screening provisions promulgated in the Prison Litigation Reform Act, 28 U.S.C. § 1915(e)(2)(B)(ii) for failure to state a claim upon which relief can be granted and it would be futile to allow Plaintiff the opportunity to amend.

IT IS FURTHER ORDERED that, to the extent that Plaintiff's submissions are construed as a habeas petition under 28 U.S.C. § 2254, such Petition is **DISMISSED** as it is a second or successive habeas petition filed without having first secured certification from the United States Court of Appeals for the Third Circuit to make such filing.

IT IS FURTHER ORDERED that the Report and Recommendation (Docket No. [3]) dated April 9, 2013, is **ADOPTED** as the Opinion of the Court.

IT IS FURTHER ORDERED that the Clerk of Court mark this case **CLOSED**.
AND IT IS FURTHER ORDERED that, pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Plaintiff has thirty (30) days to file a notice of appeal as provided by Rule 3 of the Federal Rules of Appellate Procedure.

By the Court:

s/Nora Barry Fischer
Nora Barry Fischer
United States District Judge

cc: Dominic Joseph Abbott
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